

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

Douglas Shannon Edington
11531 Chapman Ave
Garden Grove, CA 92840

Recorded in Official Records, County of San Bernardino



LARRY WALKER
Auditor/Controller – Recorder

P Counter

2/17/2009
8:57 AM
AS

Doc#: 2009-0066159



Titles: 1 Pages: 19

Fees	83.00
Taxes	0.00
Other	0.00
PAID	\$83.00

SPACE ABOVE FOR RECORDER'S USE ONLY

Covenant to Restrict Use of Property
Title of Document

THIS AREA FOR
RECORDER'S
USE ONLY

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

RECORDING REQUESTED BY:
Douglas Shannon Edington
11531 Chapman Avenue
Garden Grove, California 92840

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: Johnson P. Abraham, Project
Manager, Brownfields and Environmental
Restoration Program – Cypress Office

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: "County of San Bernardino Assessor's Parcel Numbers 1049-212-05 and
1049-212-06 (Lots 7, 8, 9 and 10)," Former Ontario Metal Recycling,
DTSC Site Code 401293-11

This Covenant and Agreement ("Covenant") is made by and between Douglas Shannon Edington (the "Covenantor"), the current owner of property situated in Ontario, County of San Bernardino, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that

the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 0.6416 acres, is more particularly described and depicted in the attached Exhibits "A" and "B". The Property is located immediately east of South Taylor Avenue and south of East Sunkist Street, in the central portion of the City of Ontario, County of San Bernardino, State of California approximately two (2) miles north of the 60 Freeway, and 0.5 miles due west of Ontario International Airport as shown in the site location map attached. The Property is also generally described as San Bernardino County Assessor's Parcel Nos. 1049-212-05 and 1049-212-06 (Lots 7, 8, 9 and 10).

1.02. The Department reviewed the Preliminary Endangerment Assessment (PEA) report, dated November 12, 2008. The purpose of this PEA is to determine whether a release of hazardous materials has occurred or is threatening to occur, and whether any such release or potential release threatens the public health or the environment. Currently, the Property consists predominately of vacant land with a small, single-story commercial building situated at the southern portion. Based on information obtained from previous investigations, the Property was used for petroleum distribution activities from the late-1940's to the mid-1970's and metals recycling from the mid-1970's to 2001. In 2005, a PEA investigation was initiated for the Ontario Metal Recycling property that was owned by Harrie B. Cohen (Cohen Property). During the PEA investigation, it was determined that Douglas Shannon Edington acquired fee title in October 2002 to the Property (the Trustee's Deed Upon Sale, dated October 16, 2002, grants and conveys all rights, title and interest in parcel 1, which includes lots 7, 8, 9 and 10, to Douglas Shannon Edington). Douglas Shannon Edington completed the PEA for the Property, which is the subject of this Land Use Covenant. On January 5, 2007, Harrie B. Cohen completed the PEA for the Cohen Property.

1.03. Numerous investigations at both the Property and Cohen Property identified an area of lead-impacted soil on both properties to a depth of approximately three feet below the surface. During PEA investigation, approximately 143 cubic yards (208.77) of metal-impacted (lead, cadmium and arsenic) soil was excavated and removed from the Property. Post-excavation confirmation soil sample laboratory analyses indicated that soil with elevated lead (5.78 mg/kg to 1,320 mg/kg) or cadmium no longer remains at the Property. None of the other metals tested, except for arsenic, were above the California Environmental Protection Agency's California Human Health Screening Levels (CHHSLs) for industrial use. The levels of arsenic detected during this additional excavation (from non-detect (0 mg/kg) to 6.3 mg/kg) were well below the DTSC suggested screening concentration of 12 mg/kg for evaluating arsenic as a chemical of potential concern.

The PEA requires a Land Use Covenant as part of the remedy at the Property because lead and arsenic, which are hazardous substances as defined in Health and Safety Code section 25316, and hazardous materials as defined in Health and Safety Code section 25260, remain above unrestricted cleanup goals at depths of 3 feet or more below the surface of the Property.

1.04. As detailed in the PEA Report approved by the Department on February 5, 2009, all or a portion of the surface and subsurface soils within 3 feet of the surface of the Property contain hazardous substances, as defined in Health and Safety Code section 25316, which include the following contaminants of concern in the ranges set forth below: lead (5.78 mg/kg to 1,320 mg/kg) and arsenic (from 0 mg/kg to 6.3 mg/kg). Based on the comparison to the CHHSLs for industrial land use or the screening background level the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable human health risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment, if limited to commercial and industrial, parks, open space, or other appropriate use.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section

25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of

Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property more than ten cubic yards of soil on the Property.

4.03. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.04. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of

those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation ceases immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 days of its original transmission.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Douglas Shannon Edington, 11531 Chapman Avenue,
Garden Grove, California 92840
and

To Department: Department of Toxic Substances Control,

Johnson P. Abraham, Project Manager, Brownfields and Environmental
Restoration Program – Cypress Office, 5796 Corporate Avenue, Cypress,
California 90630

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

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IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Douglas Shannon Edington
11531 Chapman Avenue
Garden Grove
California 92840

By: Douglas Shannon Edington
Title: Douglas Shannon Edington, Owner
Date: 2-12-09

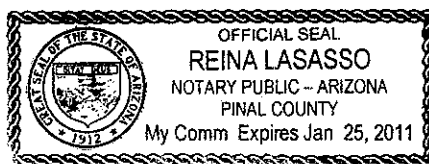
Arizona
State of ~~California~~
County of Pinal

On February 12, 2009 before me,
Reina K LaSasso

(Space above this line is for name and title of the officer/notary),

personally appeared Douglas S Edington, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY
under the laws of the State of ~~California~~ Arizona that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,



Reina LaSasso (seal)
Signature of Notary Public

Department of Toxic Substances Control:

By: Johnson P. Abraham

Title: Johnson P. Abraham, Project Manager

Brownfields and Environmental Restoration Program – Cypress Office

Date: 2/13/09

State of California

County of Orange

On February 13, 2009 before me,

Deborah R. Saito, Notary Public
(Space above this line is for name and title of the officer/notary),

personally appeared Johnson P. Abraham, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY
under the laws of the State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal,

Deborah R. Saito (seal)
Signature of Notary Public

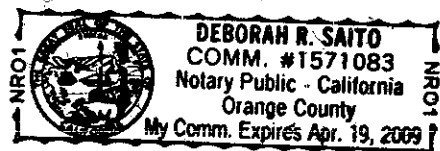


EXHIBIT A

EXHIBIT A

BEING LOTS 7, 8 AND 9 OF THE BRYANT TRACT IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED IN BOOK 17, PAGE 63 OF MAPS, RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 9, SAID CORNER BEING ON THE EASTERLY LINE OF TAYLOR AVENUE;

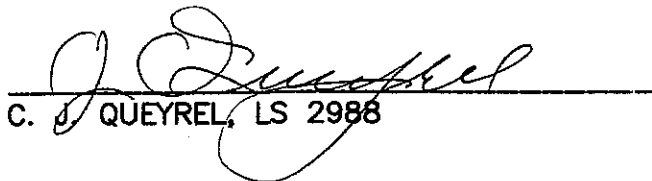
THENCE NORTH 00° 06' 00" EAST 142.50 FEET TO THE NORTHWEST CORNER OF SAID LOT 7;

THENCE LEAVING SAID EASTERLY LINE SOUTH 89° 56' 00" EAST 147.00 FEET ALONG THE NORTHERLY LINE OF SAID LOT 7 TO THE NORTHEAST CORNER THEREOF;

THENCE SOUTH 00° 06' 00" WEST 142.50 FEET TO THE SOUTHEAST CORNER OF LOT 9;

THENCE NORTH 89° 56' 00" WEST 147.00 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 9 TO THE SOUTHWEST CORNER THEREOF AND THE POINT OF BEGINNING.

SEE EXHIBIT 'B' ATTACHED HERETO AND BY THIS REFERENCE MADE A PART THEREOF.


C. J. QUEYREL, LS 2988

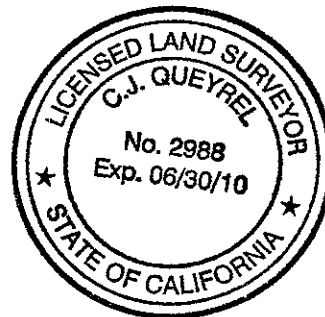


EXHIBIT A

BEING LOT 10 OF THE BRYANT TRACT IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED IN BOOK 17, PAGE 63 OF MAPS, RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 10, SAID CORNER BEING ON THE EASTERLY LINE OF TAYLOR AVENUE;

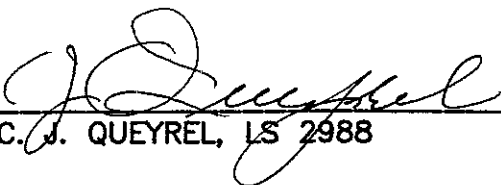
THENCE NORTH 00° 06' 00" EAST 47.50 ALONG SAID EASTERLY LINE TO THE NORTHWEST CORNER OF SAID LOT;

THENCE SOUTH 89° 56' 00" EAST 147.00 FEET TO THE NORTHEAST CORNER;

THENCE SOUTH 00° 06' 00" WEST 47.50 FEET TO THE SOUTHEAST CORNER OF SAID LOT;

THENCE NORTH 89° 56' 00" WEST 147.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT AND THE POINT OF BEGINNING.

SEE EXHIBIT 'B' ATTACHED HERETO AND BY THIS REFERENCE MADE A PART THEREOF.


C. J. QUEYREL, LS 2988

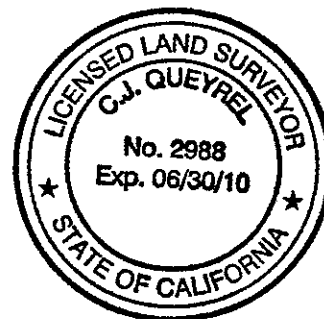


EXHIBIT B

expressly provided by the terms provisions of the fire insurance policy, if any, to which this map is an
 and **B. K. S. and Co.** for the purpose of the survey and to be a survey of the land depicted hereon. We expressly disclaim any liability
 of Ontario
 Tax Rate Area
 4000

1049 - 21

(20)

(GROVE)

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P.M. 11/11/12-11
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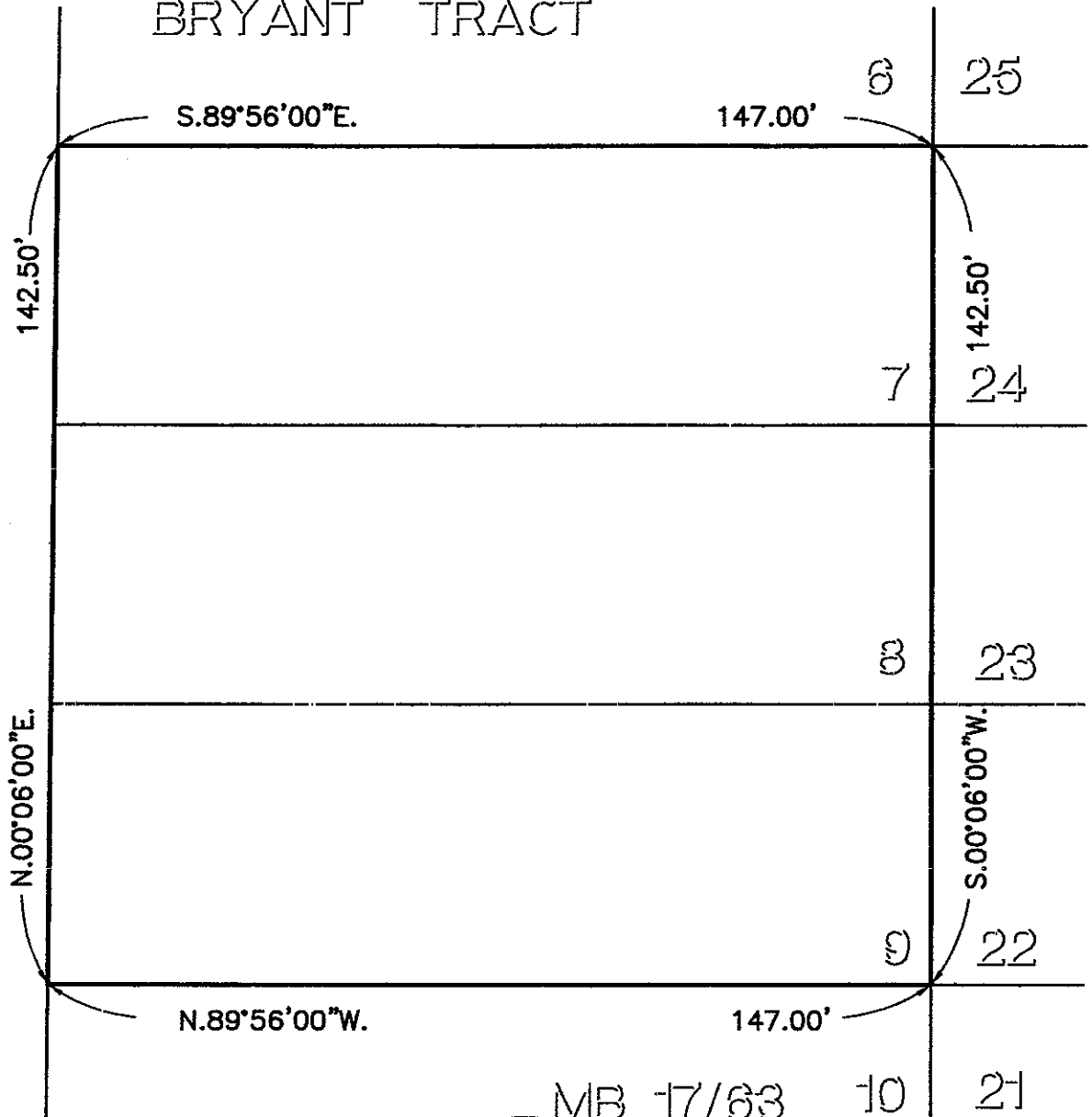
(18)

EXHIBIT B



TAYLOR AVENUE

BRYANT TRACT



MB 17/63 10 21

C.J. QUEYREL LS 2988

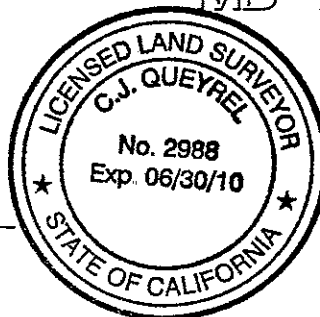
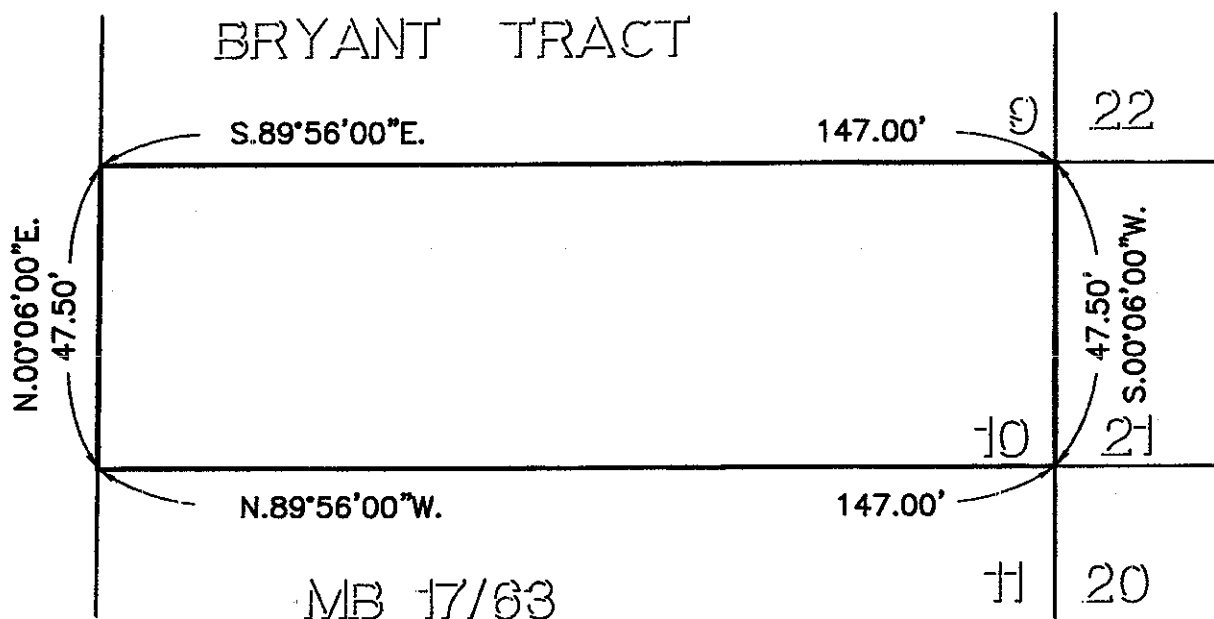


EXHIBIT B

TAYLOR AVENUE



C.J. Queyrel
C.J. QUEYREL, LS 2988

